

SECOND REGULAR SESSION

HOUSE BILL NO. 1802

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES SMITH AND HOSMER (Co-sponsors).

Read 1st time February 5, 2002, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

4327L.011

AN ACT

To repeal sections 536.010, 536.063, 536.067, 536.070, 536.073, 536.077, 536.080, 536.083, 621.015, 621.045, and 621.100, RSMo, and to enact in lieu thereof nine new sections relating to administrative hearing procedures, with an effective date.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 536.010, 536.063, 536.067, 536.070, 536.073, 536.077, 536.080, 536.083, 621.015, 621.045, and 621.100, RSMo, are repealed and nine new sections enacted in lieu thereof, to be known as sections 536.010, 536.063, 536.067, 536.070, 536.077, 621.015, 621.045, 621.047, and 621.100, to read as follows:

536.010. For the purpose of this chapter:

(1) "Agency" means any administrative officer or body existing under the constitution or by law [and authorized by law or the constitution to make rules or to adjudicate contested cases];

(2) "Contested case" means a proceeding before [an agency] **the administrative hearing commission** in which legal rights, duties or privileges of specific parties are required by law to be determined after hearing;

(3) **"Commission" means the administrative hearing commission;**

(4) The term "decision" includes decisions and orders whether negative or affirmative in form;

[(4)] (5) "Rule" means each agency statement of general applicability that implements, interprets, or prescribes law or policy, or that describes the organization, procedure, or practice requirements of any agency. The term includes the amendment or repeal of an existing rule, but

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

14 does not include:

15 (a) A statement concerning only the internal management of an agency and which does
16 not substantially affect the legal rights of, or procedures available to, the public or any segment
17 thereof;

18 (b) A declaratory ruling issued pursuant to section 536.050, or an interpretation issued
19 by an agency with respect to a specific set of facts and intended to apply only to that specific set
20 of facts;

21 (c) An intergovernmental, interagency, or intraagency memorandum, directive, manual
22 or other communication which does not substantially affect the legal rights of, or procedures
23 available to, the public or any segment thereof;

24 (d) A determination, decision, or order in a contested case;

25 (e) An opinion of the attorney general;

26 (f) Those portions of staff manuals, instructions or other statements issued by an agency
27 which set forth criteria or guidelines to be used by its staff in auditing, in making inspections,
28 in settling commercial disputes or negotiating commercial arrangements, or in the selection or
29 handling of cases, such as operational tactics or allowable tolerances or criteria for the defense,
30 prosecution, or settlement of cases, when the disclosure of such statements would enable law
31 violators to avoid detection, facilitate disregard of requirements imposed by law, or give a clearly
32 improper advantage to persons who are in an adverse position to the state;

33 (g) A specification of the prices to be charged for goods or services sold by an agency
34 as distinguished from a license fee, or other fees;

35 (h) A statement concerning only the physical servicing, maintenance or care of publicly
36 owned or operated facilities or property;

37 (i) A statement relating to the use of a particular publicly owned or operated facility or
38 property, the substance of which is indicated to the public by means of signs or signals;

39 (j) A decision by an agency not to exercise a discretionary power;

40 (k) A statement concerning only inmates of an institution under the control of the
41 department of corrections and human resources or the division of youth services, students
42 enrolled in an educational institution, or clients of a health care facility, when issued by such an
43 agency;

44 (l) Statements or requirements establishing the conditions under which persons may
45 participate in exhibitions, fairs or similar activities, managed by the state or an agency of the
46 state;

47 (m) Income tax or sales forms, returns and instruction booklets prepared by the state
48 department of revenue for distribution to taxpayers for use in preparing tax returns.

49 [(5)] (6) "State agency" means each board, commission, department, officer or other

50 administrative office or unit of the state other than the general assembly, the courts, the governor,
51 or a political subdivision of the state, existing under the constitution or statute, and authorized
52 by the constitution or statute to make rules [or to adjudicate contested cases].

536.063. [In any contested case:

2 (1) The contested case shall be commenced by the filing of a writing by which the party
3 or agency instituting the proceeding seeks such action as by law can be taken by the agency only
4 after opportunity for hearing, or seeks a hearing for the purpose of obtaining a decision
5 reviewable upon the record of the proceedings and evidence at such hearing, or upon such record
6 and additional evidence, either by a court or by another agency. Answering, intervening and
7 amendatory writings and motions may be filed in any case and shall be filed where required by
8 rule of the agency, except that no answering instrument shall be required unless the notice of
9 institution of the case states such requirement. Entries of appearance shall be permitted.

10 (2) Any writing filed whereby affirmative relief is sought shall state what relief is sought
11 or proposed and the reason for granting it, and shall not consist merely of statements or charges
12 phrased in the language of a statute or rule; provided, however, that this subdivision shall not
13 apply when the writing is a notice of appeal as authorized by law.

14 (3) Reasonable opportunity shall be given for the preparation and presentation of
15 evidence bearing on any issue raised or decided or relief sought or granted. Where issues are
16 tried without objection or by consent, such issues shall be deemed to have been properly before
17 the agency. Any formality of procedure may be waived by mutual consent.

18 (4) Every writing seeking relief or answering any other writing, and any motion shall
19 state the name and address of the attorney, if any, filing it; otherwise the name and address of the
20 party filing it.

21 (5) By rule the agency may require any party filing such a writing to furnish, in addition
22 to the original of such writing, the number of copies required for the agency's own use and the
23 number of copies necessary to enable the agency to comply with the provisions of this
24 subdivision hereinafter set forth. The agency shall, without charge therefor, mail one copy of
25 each such writing, as promptly as possible after it is filed, to every party or his attorney who has
26 filed a writing or who has entered his appearance in the case, and who has not theretofore been
27 furnished with a copy of such writing and shall have requested copies of the writings; provided
28 that in any case where the parties are so numerous that the requirements of this subdivision
29 would be unduly onerous, the agency may in lieu thereof (a) notify all parties of the fact of the
30 filing of such writing, and (b) permit any party to copy such writing.] **1. The administrative**
31 **hearing commission shall conduct hearings and make findings of fact and conclusions of**
32 **law in any contested case commenced by either a state agency or an affected party.**
33 **Hearings conducted pursuant to this section shall conform with the rules of civil procedure.**

34 **It shall not be necessary for a person to be represented by counsel in order to institute or**
35 **defend any such proceeding, and the commission shall adopt rules and procedures which**
36 **shall facilitate the filing and processing of such proceedings where a person is not**
37 **represented by counsel.**

38 **2. The commission may stay or suspend any action of a state agency pending the**
39 **commission's findings and determination in a contested case.**

40 **3. In any contested case, the procedural rules promulgated by the commission shall**
41 **apply.**

536.067. In any contested case:

2 (1) The [agency] **commission** shall promptly mail a notice of institution of the case to
3 all necessary parties, if any, and to all persons designated by the moving party and to any other
4 persons to whom the [agency] **commission** may determine that notice should be given. The
5 [agency] **commission** or its clerk or secretary shall keep a permanent record of the persons to
6 whom such notice was sent and of the addresses to which sent and the time when sent. Where
7 a contested case would affect the rights, privileges or duties of a large number of persons whose
8 interests are sufficiently similar that they may be considered as a class, notice may in a proper
9 case be given to a reasonable number thereof as representatives of such class. In any case where
10 the name or address of any proper or designated party or person is not known to the [agency]
11 **commission**, and where notice by publication is permitted by law, then notice by publication
12 may be given in accordance with any rule or regulation of the [agency] **commission** or if there
13 is no such rule or regulation, then, in a proper case, the [agency] **commission** may by a special
14 order fix the time and manner of such publication.

15 (2) The notice of institution of the case to be mailed as provided in this section shall state
16 in substance:

17 (a) The caption and number of the case;

18 (b) That a writing seeking relief has been filed in such case, the date it was filed, and the
19 name of the party filing the same;

20 (c) A brief statement of the matter involved in the case unless a copy of the writing
21 accompanies said notice;

22 (d) Whether an answer to the writing is required, and if so the date when it must be filed;

23 (e) That a copy of the writing may be obtained from the [agency] **commission**, giving
24 the address to which application for such a copy may be made. This may be omitted if the notice
25 is accompanied by a copy of such writing;

26 (f) The location in the Code of State Regulations of any rules of the [agency]
27 **commission** regarding discovery or a statement that the [agency] **commission** shall send a copy
28 of such rules on request;

29 (3) Unless the notice of hearing hereinafter provided for shall have been included in the
30 notice of institution of the case, the [agency] **commission** shall, as promptly as possible after the
31 time and place of hearing have been determined, mail a notice of hearing to the moving party and
32 to all persons and parties to whom a notice of institution of the case was required to be or was
33 mailed, and also to any other persons who may thereafter have become or have been made parties
34 to the proceeding. The notice of hearing shall state:

35 (a) The caption and number of the case;

36 (b) The time and place of hearing;

37 (4) No hearing in a contested case shall be had, except by consent, until a notice of
38 hearing shall have been given substantially as provided in this section, and such notice shall in
39 every case be given a reasonable time before the hearing. Such reasonable time shall be at least
40 ten days except in cases where the public morals, health, safety or interest may make a shorter
41 time reasonable; provided that when a longer time than ten days is prescribed by statute, no time
42 shorter than that so prescribed shall be deemed reasonable.

536.070. [In any contested case:

2 (1) Oral evidence shall be taken only on oath or affirmation.

3 (2) Each party shall have the right to call and examine witnesses, to introduce exhibits,
4 to cross-examine opposing witnesses on any matter relevant to the issues even though that matter
5 was not the subject of the direct examination, to impeach any witness regardless of which party
6 first called him to testify, and to rebut the evidence against him.

7 (3) A party who does not testify in his own behalf may be called and examined as if
8 under cross-examination.

9 (4) Each agency shall cause all proceedings in hearings before it to be suitably recorded
10 and preserved. A copy of the transcript of such a proceeding shall be made available to any
11 interested person upon the payment of a fee which shall in no case exceed the reasonable cost
12 of preparation and supply.

13 (5) Records and documents of the agency which are to be considered in the case shall
14 be offered in evidence so as to become a part of the record, the same as any other evidence, but
15 the records and documents may be considered as a part of the record by reference thereto when
16 so offered.

17 (6) Agencies shall take official notice of all matters of which the courts take judicial
18 notice. They may also take official notice of technical or scientific facts, not judicially
19 cognizable, within their competence, if they notify the parties, either during a hearing or in
20 writing before a hearing, or before findings are made after hearing, of the facts of which they
21 propose to take such notice and give the parties reasonable opportunity to contest such facts or
22 otherwise show that it would not be proper for the agency to take such notice of them.

23 (7) Evidence to which an objection is sustained shall, at the request of the party seeking
24 to introduce the same, or at the instance of the agency, nevertheless be heard and preserved in
25 the record, together with any cross-examination with respect thereto and any rebuttal thereof,
26 unless it is wholly irrelevant, repetitious, privileged, or unduly long.

27 (8) Any evidence received without objection which has probative value shall be
28 considered by the agency along with the other evidence in the case. The rules of privilege shall
29 be effective to the same extent that they are now or may hereafter be in civil actions. Irrelevant
30 and unduly repetitious evidence shall be excluded.

31 (9) Copies of writings, documents and records shall be admissible without proof that the
32 originals thereof cannot be produced, if it shall appear by testimony or otherwise that the copy
33 offered is a true copy of the original, but the agency may, nevertheless, if it believes the interests
34 of justice so require, sustain any objection to such evidence which would be sustained were the
35 proffered evidence offered in a civil action in the circuit court, but if it does sustain such an
36 objection, it shall give the party offering such evidence reasonable opportunity and, if necessary,
37 opportunity at a later date, to establish by evidence the facts sought to be proved by the evidence
38 to which such objection is sustained.

39 (10) Any writing or record, whether in the form of an entry in a book or otherwise, made
40 as a memorandum or record of an act, transaction, occurrence or event, shall be admissible as
41 evidence of the act, transaction, occurrence or event, if it shall appear that it was made in the
42 regular course of any business, and that it was the regular course of such business to make such
43 memorandum or record at the time of such act, transaction, occurrence, or event or within a
44 reasonable time thereafter. All other circumstances of the making of such writing or record,
45 including lack of personal knowledge by the entrant or maker, may be shown to affect the weight
46 of such evidence, but such showing shall not affect its admissibility. The term "business" shall
47 include business, profession, occupation and calling of every kind.

48 (11) The results of statistical examinations or studies, or of audits, compilations of
49 figures, or surveys, involving interviews with many persons, or examination of many records,
50 or of long or complicated accounts, or of a large number of figures, or involving the
51 ascertainment of many related facts, shall be admissible as evidence of such results, if it shall
52 appear that such examination, study, audit, compilation of figures, or survey was made by or
53 under the supervision of a witness, who is present at the hearing, who testifies to the accuracy
54 of such results, and who is subject to cross-examination, and if it shall further appear by evidence
55 adduced that the witness making or under whose supervision such examination, study, audit,
56 compilation of figures, or survey was made was basically qualified to make it. All the
57 circumstances relating to the making of such an examination, study, audit, compilation of figures
58 or survey, including the nature and extent of the qualifications of the maker, may be shown to

59 affect the weight of such evidence but such showing shall not affect its admissibility.

60 (12) Any party or the agency desiring to introduce an affidavit in evidence at a hearing
61 in a contested case may serve on all other parties (including, in a proper case, the agency) copies
62 of such affidavit in the manner hereinafter provided, at any time before the hearing, or at such
63 later time as may be stipulated. Not later than seven days after such service, or at such later time
64 as may be stipulated, any other party (or, in a proper case, the agency) may serve on the party or
65 the agency who served such affidavit an objection to the use of the affidavit or some designated
66 portion or portions thereof on the ground that it is in the form of an affidavit; provided, however,
67 that if such affidavit shall have been served less than eight days before the hearing such objection
68 may be served at any time before the hearing or may be made orally at the hearing. If such
69 objection is so served, the affidavit or the part thereof to which objection was made, may not be
70 used except in ways that would have been permissible in the absence of this subdivision;
71 provided, however, that such objection may be waived by the party or the agency making the
72 same. Failure to serve an objection as aforesaid, based on the ground aforesaid, shall constitute
73 a waiver of all objections to the introduction of such affidavit, or of the parts thereof with respect
74 to which no such objection was so served, on the ground that it is in the form of an affidavit, or
75 that it constitutes or contains hearsay evidence, or that it is not, or contains matters which are not,
76 the best evidence, but any and all other objections may be made at the hearing. Nothing herein
77 contained shall prevent the cross-examination of the affiant if he is present in obedience to a
78 subpoena or otherwise and if he is present, he may be called for cross-examination during the
79 case of the party who introduced the affidavit in evidence. If the affidavit is admissible in part
80 only it shall be admitted as to such part, without the necessity of preparing a new affidavit. The
81 manner of service of such affidavit and of such objection shall be by delivering or mailing copies
82 thereof to the attorneys of record of the parties being served, if any, otherwise, to such parties,
83 and service shall be deemed complete upon mailing; provided, however, that when the parties
84 are so numerous as to make service of copies of the affidavit on all of them unduly onerous, the
85 agency may make an order specifying on what parties service of copies of such affidavit shall
86 be made, and in that case a copy of such affidavit shall be filed with the agency and kept
87 available for inspection and copying. Nothing in this subdivision shall prevent any use of
88 affidavits that would be proper in the absence of this subdivision.] **1. The administrative**
89 **hearing commission shall promulgate rules to apply exclusively to proceedings arising from**
90 **contested cases as defined in section 536.010. Rules of procedure adopted under the**
91 **authority of this section shall be designed to simplify the maintenance of actions and to**
92 **enable review to be sought, where appropriate, without the need to be represented by**
93 **independent counsel.**

94 **2. Any rule or portion of a rule, as that term is defined in section 536.010, that is**

95 created under the authority delegated in this section shall become effective only if it
96 complies with and is subject to all of the provisions of this chapter and, if applicable,
97 section 536.028. This section and this chapter are nonseverable and if any of the powers
98 vested with the general assembly pursuant to this chapter, to review, to delay the effective
99 date or to disapprove and annul a rule are subsequently held unconstitutional, then the
100 grant of rulemaking authority and any rule proposed or adopted after August 28, 2002,
101 shall be invalid and void.

536.077. In any contested case before [an agency created by the constitution or state
2 statute] **the commission**, such [agency] **commission** shall upon request of any party issue
3 subpoenas and shall in a proper case issue subpoenas duces tecum. Subpoenas other than
4 subpoenas duces tecum shall on request of any party be issued with the caption and number of
5 the case, the name of the witness, and the date for appearance in blank, but such caption, number,
6 name and date shall be filled in by such party before service. Subpoenas shall extend to all parts
7 of the state, and shall be served and returned as in civil actions in the circuit court. The witness
8 shall be entitled to the same fees and, if compelled to travel more than forty miles from his **or**
9 **her** place of residence, shall be entitled to the same tender of fees for travel and attendance, and
10 at the same time, as is now or may hereafter be provided for witnesses in civil actions in the
11 circuit court, such fees to be paid by the party or [agency] **commission** subpoenaing him **or her**,
12 except where the payment of such fees is otherwise provided for by law. The [agency]
13 **commission** shall enforce subpoenas by applying to a judge of the circuit court of the county of
14 the hearing or of any county where the witness resides or may be found, for an order upon any
15 witness who shall fail to obey a subpoena to show cause why such subpoena should not be
16 enforced, which said order and a copy of the application therefor shall be served upon the witness
17 in the same manner as a summons in a civil action, and if the said circuit court shall, after a
18 hearing, determine that the subpoena should be sustained and enforced, said court shall proceed
19 to enforce said subpoena in the same manner as though said subpoena had been issued in a civil
20 case in the circuit court. [Any such agency] **The commission** may delegate to any member,
21 officer, or employee thereof the power to issue subpoenas in contested cases; provided that,
22 except where otherwise authorized by law, subpoenas duces tecum shall be issued only by order
23 of the [agency or a member thereof] **commission**.

621.015. The "Administrative Hearing Commission" is assigned to the office of
2 administration. It shall consist of no more than [three] **six** commissioners. The commissioners
3 shall be appointed by the governor with the advice and consent of the senate. The term of each
4 commissioner shall be for six years and until his **or her** successor is appointed, qualified and
5 sworn. The commissioners shall be attorneys at law admitted to practice before the supreme
6 court of Missouri, but shall not practice law during their term of office. Each commissioner shall

7 receive annual compensation of fifty-one thousand dollars plus any salary adjustment provided
8 pursuant to section 105.005, RSMo. Each commissioner shall also be entitled to actual and
9 necessary expenses in the performance of his **or her** duties. The [office] **offices** of the
10 administrative hearing commission shall be located in [the City of Jefferson] **Jefferson City, St.**
11 **Louis, Kansas City and Springfield** and it may employ necessary clerical assistance,
12 compensation and expenses of the commissioners to be paid from appropriations from general
13 revenue made for that purpose.

621.045. 1. The administrative hearing commission shall conduct hearings and make
2 findings of fact and conclusions of law in those cases when, under the law, a license issued by
3 any of the following agencies may be revoked or suspended or when the licensee may be placed
4 on probation or when an agency refuses to permit an applicant to be examined upon his **or her**
5 qualifications or refuses to issue or renew a license of an applicant who has passed an
6 examination for licensure or who possesses the qualifications for licensure without examination:

7 Missouri State Board of Accountancy
8 Missouri Board of Registration for Architects, Professional Engineers and Land
9 Surveyors
10 Board of Barber Examiners
11 Board of Cosmetology
12 Board of Chiropody and Podiatry
13 Board of Chiropractic Examiners
14 Missouri Dental Board
15 Board of Embalmers and Funeral Directors
16 Board of Registration for the Healing Arts
17 Board of Nursing
18 Board of Optometry
19 Board of Pharmacy
20 Missouri Real Estate Commission
21 Missouri Veterinary Medical Board
22 Supervisor of Liquor Control
23 Department of Health and Senior Services
24 Department of Insurance
25 Department of Mental Health

26 2. [If in the future there are created by law any new or additional] **Notwithstanding any**
27 **other provision of law to the contrary, any** administrative agencies which have the power to
28 issue, revoke, suspend, or place on probation any license[, then those agencies are] **shall also fall**
29 under the provisions of this law.

30 3. Notwithstanding any other provision of this section to the contrary, after August 28,
31 1995, in order to encourage settlement of disputes between any agency described in subsection
32 1 of this section and its licensees, any such agency shall:

33 (1) Provide the licensee with a written description of the specific conduct for which
34 discipline is sought and a citation to the law and rules allegedly violated, together with copies
35 of any documents which are the basis thereof, or file a contested case against the licensee, at least
36 thirty days prior to offering the licensee a settlement proposal, and provide the licensee with an
37 opportunity to respond to the allegations;

38 (2) If no contested case has been filed against the licensee, allow the licensee at least
39 sixty days, from the date of mailing, during which to consider the agency's initial settlement offer
40 and discuss the terms of such settlement offer with the agency;

41 (3) If no contested case has been filed against the licensee, advise the licensee that the
42 licensee may, either at the time the settlement agreement is signed by all parties, or within fifteen
43 days thereafter, submit the agreement to the administrative hearing commission for determination
44 that the facts agreed to by the parties to the settlement constitute grounds for denying or
45 disciplining the license of the licensee; and

46 (4) In any contact pursuant to this subsection by the agency or its counsel with a licensee
47 who is not represented by counsel, advise the licensee that the licensee has the right to consult
48 an attorney at the licensee's own expense.

49 4. If the licensee desires review by the administrative hearing commission pursuant to
50 subdivision (3) of subsection 3 of this section at any time prior to the settlement becoming final,
51 the licensee may rescind and withdraw from the settlement and any admissions of fact or law in
52 the agreement shall be deemed withdrawn and not admissible for any purposes under the law
53 against the licensee. Any settlement submitted to the administrative hearing commission shall
54 not be effective and final unless and until findings of fact and conclusions of law are entered by
55 the administrative hearing commission that the facts agreed to by the parties to the settlement
56 constitute grounds for denying or disciplining the license of the licensee.

57 5. As to a matter settled prior to August 28, 1995, by consent agreement or agreed
58 settlement, any party to a consent agreement or agreed settlement, other than a state agency, after
59 having received written notice at their last known address known to the agency from the
60 respective licensing agency of a person's rights under this section, shall have six months to file
61 an action in the circuit court of Cole County contesting the authority of any agency described in
62 subsection 1 of this section to enter into such consent agreement or agreed settlement. Any
63 consent agreement or agreed settlement which is not invalidated by the court pursuant to this
64 subsection shall be given full force and effect by all courts and agencies.

65 **6. Notwithstanding any other provisions of law, any contested case filed on or after**

66 **January 1, 2003, relating to licensees or certificate holders not previously covered by this**
67 **section shall be brought initially before the commission and the commission shall conduct**
68 **hearings and make findings of fact and conclusions of law. Any case pending which has**
69 **not had a hearing completed by January 1, 2003, shall be transferred to the commission.**
70 **Any pending case that has been heard prior to January 1, 2003, shall remain with the**
71 **agency hearing the matter pending the disposition of the case.**

72 **7. In any case brought before the commission pursuant to this section, the state's**
73 **interest shall be represented by the attorney general or his designee.**

621.047. 1. Notwithstanding any other provision of law to the contrary, the
2 **commission shall conduct all hearings and make findings of fact and conclusions of law in**
3 **any contested case, other than cases brought pursuant to chapter 287, RSMo, as defined**
4 **in section 536.010, RSMo.**

5 **2. Any contested case filed on or after January 1, 2003, shall be brought initially**
6 **before the commission rather than the agency that previously conducted the initial hearing**
7 **of such case. Any case pending which has not had a hearing completed by January 1, 2003,**
8 **shall be transferred to the commission. Any pending case that has been heard prior to**
9 **January 1, 2003, shall remain with the agency hearing the matter pending the disposition**
10 **of the case.**

11 **3. In any case brought before the commission pursuant to this section, the state's**
12 **interest shall be represented by the attorney general or his designee.**

621.100. 1. Upon receipt of a written complaint from an agency [named in section
2 **621.045] in a case relating to a holder of a license granted by such agency, or upon receipt of**
3 **such complaint from the attorney general, the administrative hearing commission shall cause a**
4 **copy of said complaint to be served upon such licensee in person or by certified mail, together**
5 **with a notice of the place of and the date upon which the hearing on said complaint will be held.**
6 **In any case initiated upon complaint of the attorney general, the agency which issued the license**
7 **shall be given notice of such complaint and the date upon which the hearing will be held by**
8 **delivery of a copy of such complaint and notice to the office of such agency or by certified mail.**
9 **Such agency may intervene and may retain the services of legal counsel to represent it in such**
10 **case.**

11 **2. In any case initiated under this section, the custodian of the records of an agency may**
12 **prepare a sworn affidavit stating truthfully pertinent information regarding the license status of**
13 **the licensee charged in the complaint, including only: the name of the licensee; his license**
14 **number; its designated date of expiration; the date of his original Missouri licensure; the**
15 **particular profession, practice or privilege licensed; and the status of his license as current and**
16 **active or otherwise. This affidavit shall be received as substantial and competent evidence of**

17 the facts stated therein notwithstanding any objection as to the form, manner of presentment or
18 admissibility of this evidence, and shall create a rebuttable presumption of the veracity of the
19 statements therein; provided, however, that the procedures specified [in] **by the rules of the**
20 **administrative hearing commission promulgated pursuant to** section 536.070, RSMo, shall
21 apply to the introduction of this affidavit in any case where the status of this license constitutes
22 a material issue of fact in the proof of the cause charged in the complaint.

2 [536.073. 1. In any contested case before an agency created by the
3 constitution or state statute, any party may take and use depositions in the same
4 manner, upon and under the same conditions, and upon the same notice, as is or may
5 hereafter be provided for with respect to the taking and using of depositions in civil
6 actions in the circuit court; provided, that any commission which may be required
7 shall be sued out of the circuit court or the office of the clerk thereof, within and for
8 the county where the headquarters of the agency is located or where the hearing is to
9 be held; and provided further, that no commissioner shall be appointed for the taking
10 in this state of depositions.

11 2. In addition to the powers granted in subsection 1 of this section, any
12 agency authorized to hear a contested case may make rules to provide that the parties
13 may obtain all or any designated part of the same discovery that any Missouri
14 supreme court rule provides for civil actions in circuit court. The agency may
15 enforce discovery by the same methods, terms and conditions as provided by supreme
16 court rule in civil actions in the circuit court. Except as otherwise provided by law,
17 no agency discovery order which:

18 (1) Requires a physical or mental examination;
19 (2) Permits entrance upon land or inspection of property without permission
20 of the owner; or
21 (3) Purports to hold any person in contempt;
22 shall be enforceable except upon order of the circuit court of the county in which the
23 hearing will be held or the circuit court of Cole County at the option of the person
24 seeking enforcement, after notice and hearing.

25 3. The administrative hearing commission shall adopt rules providing for
26 informal disposition of a contested case by stipulation, consent order, agreed
27 settlement or by disposition in the nature of default judgment, judgment on the
28 pleadings, or summary judgment. No such rules shall be made by the administrative
29 hearing commission under this provision except in accordance with section 536.021
30 and after a public hearing.

31 4. No rule or portion of a rule promulgated under the authority of this chapter
32 shall become effective until it has been approved by the joint committee on
33 administrative rules in accordance with the procedures provided herein, and the
34 delegation of the legislative authority to enact law by the adoption of such rules is
35 dependent upon the power of the joint committee on administrative rules to review
36 and suspend rules pending ratification by the senate and the house of representatives
as provided herein.

37 5. Upon filing any proposed rule with the secretary of state, the filing agency
38 shall concurrently submit such proposed rule to the committee, which may hold
39 hearings upon any proposed rule or portion thereof at any time.

40 6. A final order of rulemaking shall not be filed with the secretary of state
41 until thirty days after such final order of rulemaking has been received by the
42 committee except as provided in this subsection. The committee may hold one or
43 more hearings upon such final order of rulemaking during the thirty-day period. If
44 the committee does not disapprove such order of rulemaking within the thirty-day
45 period, the filing agency may file such order of rulemaking with the secretary of state
46 and the order of rulemaking shall be deemed approved. Contrary provisions of the
47 law notwithstanding, if the committee approves a proposed rule prior to the
48 expiration of the period for review, it shall notify the filing agency and the secretary
49 of state at which point the final order of rulemaking may be filed.

50 7. The committee may, by majority vote of the members, suspend the order
51 of rulemaking or portion thereof by action taken prior to the filing of the final order
52 of rulemaking only for one or more of the following grounds:

- 53 (1) An absence of statutory authority for the proposed rule;
54 (2) An emergency relating to public health, safety or welfare;
55 (3) The proposed rule is in conflict with state law;
56 (4) A substantial change in circumstance since enactment of the law upon
57 which the proposed rule is based;
58 (5) The proposed rule is arbitrary and capricious.

59 8. If the committee disapproves any rule or portion thereof, the filing agency
60 shall not file such disapproved portion of any rule with the secretary of state and the
61 secretary of state shall not publish in the Missouri Register any final order of
62 rulemaking containing the disapproved portion.

63 9. If the committee disapproves any rule or portion thereof, the committee
64 shall report its findings to the senate and the house of representatives. No rule or
65 portion thereof disapproved by the committee shall take effect so long as the senate
66 and the house of representatives ratify the act of the joint committee by resolution
67 adopted in each house within thirty legislative days after such rule or portion thereof
68 has been disapproved by the joint committee.

69 10. Upon adoption of a rule as provided herein, any such rule or portion
70 thereof may be suspended or revoked by the general assembly either by bill or,
71 pursuant to section 8, article IV of the constitution, by concurrent resolution upon
72 recommendation of the joint committee on administrative rules. The committee shall
73 be authorized to hold hearings and make recommendations pursuant to the provisions
74 of section 536.037. The secretary of state shall publish in the Missouri Register, as
75 soon as practicable, notice of the suspension or revocation.]

2 [536.080. 1. In contested cases each party shall be entitled to present oral
3 arguments or written briefs at or after the hearing which shall be heard or read by
4 each official of the agency who renders or joins in rendering the final decision.

2. In contested cases, each official of an agency who renders or joins in

5 rendering a final decision shall, prior to such final decision, either hear all the
6 evidence, read the full record including all the evidence, or personally consider the
7 portions of the record cited or referred to in the arguments or briefs. The parties to
8 a contested case may by written stipulation or by oral stipulation in the record at a
9 hearing waive compliance with the provisions of this section.]

2 [536.083. Notwithstanding any other provision of law to the contrary, in any
3 administrative hearing conducted under the procedures established in this chapter,
4 and in any other administrative hearing conducted under authority granted any state
5 agency, no person who acted as a hearing officer or who otherwise conducted the first
6 administrative hearing involving any single issue shall conduct any subsequent
administrative rehearing or appeal involving the same issue and same parties.]

Section B. The repeal and reenactment of sections 536.010, 536.063, 536.067, 536.070,
2 536.073, 536.077, 836.080, and 836.083 shall become effective January 1, 2003.